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99-217

Congress of the United States

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Washington, DC 20515

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April 11, 2000

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Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

2838

Dear Chairman Kennard:

We are writing you to express our concerns regarding Notice of Proposed Rulemaking (NPRM) 99-141, with respect to telecommunications provider access to consumers in multi-tenanted buildings.

We certainly share your commitment to extend the benefits of a deregulated and more competitive telecommunications marketplace to all Americans as expeditiously as possible. We are concerned, however, by elements of this particular NPRM that would affect property owners across the country. Specifically, if the building access mandates discussed in NPRM 99-141 were to be implemented, they could subject building owners to intrusive federal regulations requiring them to relinquish valuable building space to telecommunications providers.

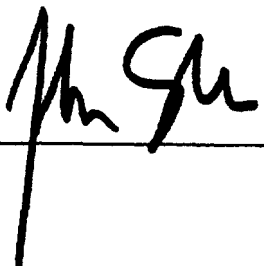
Building owners already are entering into contracts with a variety of telecommunications providers to deliver even better, faster and cheaper services to their tenants. Many building owners are investing millions of their own dollars to create the infrastructure to bring tomorrow's technology to their tenants. We believe that competitive market forces will ensure that tenants will be able to enjoy true choice of telecommunications carriers. Additionally, it is our hope that the real estate and telecommunications industries can reach an agreeable solution that will continue to expand broadband opportunities without government intervention.

Additionally, as indicated by two members of the Commission when the NPRM was circulated and as indicated in the NPRM itself, the regulations it discusses may implicate the Takings Clause of the Fifth Amendment. We cannot favor a policy that does not respect the private property rights of building owners and has the potential to impose significant unfunded financial liability on the taxpaying public.

Therefore, unless the Commission can demonstrate that market forces will not provide true choice to tenants and that the proposed regulations pass Constitutional muster, we ask that you refrain from advancing any regulation that mandates the terms and conditions under which telecommunications providers would be granted access to private buildings.

Sincerely,

No. of Copies rec'd 2
List ABCDE





Roy Blunt

Wally Heger

George Klamovich

Richard Panko

Ken Calvert

Natta B. Jones

Jim Gibbons

Ly Well

Fred Strickland

Ann Camp

Phil English

Tim P. Hall

J. Barcia

Ray Law

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Zach Wamp



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
May 24, 2000

The Honorable John M. Shimkus
U.S. House of Representatives
513 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Shimkus:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

The *NPRM* represents one step in the Commission's ongoing efforts to foster competition in local telecommunications markets pursuant to Congress' directive in the Telecommunications Act of 1996. These efforts are intended to bring the benefits of competition, choice, and advanced services to all consumers of telecommunications, including businesses and residential customers, regardless of where they live or whether they own or rent their premises. In particular, the *NPRM* addresses issues that bear specifically on the availability of facilities-based telecommunications competition to customers in multiple tenant environments, such as apartment buildings, office buildings, office parks, shopping centers, and manufactured housing communities.

The purpose of this proceeding is to explore broadly which actions the Commission can and should take to promote facilities-based competition to the incumbent local exchange carriers (ILECs). The item seeks comment on a wide range of potential Commission actions, in most instances without reaching any specific conclusions. For example, the item neutrally seeks comment on the legal and policy issues raised by a possible requirement that building owners who allow one or more telecommunications carriers access to facilities that they control make comparable access available to other carriers on a nondiscriminatory basis. The item also requests comment on whether the Commission can and should extend to providers of telecommunications service rules prohibiting restrictions on the placement of antennas used for over-the-air reception similar to those adopted for video programming services under section 207 of the 1996 Telecommunications Act. In addition, the item proposes and seeks comment on potential obligations on ILECs and other public utilities to permit access to their in-building facilities under certain provisions of the Communications Act of 1934. Finally, the *NPRM* seeks

comment on whether telecommunications providers, with or without market power, should be prohibited from entering into exclusive contracts with owners of multi-tenant buildings.

The Commission has not reached any conclusions regarding the matters discussed in the *NPRM*. The Commission currently is reviewing nearly 1000 comments that were filed on the *NPRM* and a related *Notice of Inquiry* by telecommunications companies, electric utilities, building owners, and State and local governments, including a number of comments that address the constitutional issues. As your letter indicates, certain potential actions discussed in the *NPRM* raise important takings issues. The Commission has not yet resolved the *NPRM*, but let me assure you that we are committed to ensuring that any requirements we adopt comport with the Fifth Amendment. To this end, our General Counsel's office is working closely with other Commission staff to evaluate carefully the constitutional issues raised by the *NPRM*, including any potential for government liability under the "just compensation" provision of the Takings Clause. I want to assure you that our staff will be considering carefully these important and complex constitutional issues, as well as other legal and policy issues raised by the *NPRM*, before it makes its recommendations to the Commission for its consideration.

I appreciate your interest and participation in this proceeding. We have placed your letter in the record of this proceeding and will give it full consideration along with all other comments. Please let me know if I can be of further assistance.

Sincerely,

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William E. Kennard
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON

May 24, 2000

The Honorable Barbara Cubin
U.S. House of Representatives
1114 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Cubin:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

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William E. Kennard
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON

May 24, 2000

The Honorable Dave Camp
U.S. House of Representatives
137 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Camp:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

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William E. Kennard
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 24, 2000

The Honorable Wally Herger
U.S. House of Representatives
2433 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Herger:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

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William E. Kennard
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
May 24, 2000

The Honorable Phil English
U.S. House of Representatives
1410 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman English:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

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William E. Kennard
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
May 24, 2000

The Honorable George Radanovich
U.S. House of Representatives
123 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Radanovich:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

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William E. Kennard
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON

May 24, 2000

The Honorable Tony P. Hall
U.S. House of Representatives
1436 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Hall:

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OFFICE OF
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FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON

May 24, 2000

The Honorable Richard W. Pombo
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Pombo:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

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I appreciate your interest and participation in this proceeding. We have placed your letter in the record of this proceeding and will give it full consideration along with all other comments. Please let me know if I can be of further assistance.

Sincerely,

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William E. Kennard
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
May 24, 2000

The Honorable James A. Barcia
U.S. House of Representatives
2419 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Barcia:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

The *NPRM* represents one step in the Commission's ongoing efforts to foster competition in local telecommunications markets pursuant to Congress' directive in the Telecommunications Act of 1996. These efforts are intended to bring the benefits of competition, choice, and advanced services to all consumers of telecommunications, including businesses and residential customers, regardless of where they live or whether they own or rent their premises. In particular, the *NPRM* addresses issues that bear specifically on the availability of facilities-based telecommunications competition to customers in multiple tenant environments, such as apartment buildings, office buildings, office parks, shopping centers, and manufactured housing communities.

The purpose of this proceeding is to explore broadly which actions the Commission can and should take to promote facilities-based competition to the incumbent local exchange carriers (ILECs). The item seeks comment on a wide range of potential Commission actions, in most instances without reaching any specific conclusions. For example, the item neutrally seeks comment on the legal and policy issues raised by a possible requirement that building owners who allow one or more telecommunications carriers access to facilities that they control make comparable access available to other carriers on a nondiscriminatory basis. The item also requests comment on whether the Commission can and should extend to providers of telecommunications service rules prohibiting restrictions on the placement of antennas used for over-the-air reception similar to those adopted for video programming services under section 207 of the 1996 Telecommunications Act. In addition, the item proposes and seeks comment on potential obligations on ILECs and other public utilities to permit access to their in-building facilities under certain provisions of the Communications Act of 1934. Finally, the *NPRM* seeks

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William E. Kennard
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
May 24, 2000

The Honorable Ken Calvert
U.S. House of Representatives
2201 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Calvert:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

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William E. Kennard
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
May 24, 2000

The Honorable E. Clay Shaw, Jr.
U.S. House of Representatives
2408 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Shaw:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

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William E. Kennard
Chairman



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 24, 2000

The Honorable Walter B. Jones, Jr.
U.S. House of Representatives
422 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Jones:

Thank you for your letter regarding the Commission's initiative to promote the development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other issues, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional Takings Clause implications of potential actions discussed in the *NPRM*.

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